

EXHIBIT "K"

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAI'I

3
4 RAYMOND WARE,

CIVIL NO. 04-00671 HG LEK

5 Plaintiff,

6 vs.

7 SIDNEY HAYAKAWA, Director of

8 Transportation Security

9 Administration-Honolulu; KEN

10 KAMAHELE, Deputy Director,

11 Transportation Security

12 Administration; MICHAEL

13 CHERTOFF, Secretary,

14 Department of Homeland

15 Security, DEPARTMENT OF

16 HOMELAND SECURITY; JOHN DOES

17 1-5,

18 Defendants.

19
20 DEPOSITION OF MILAGROS I. DRAKE

21 Taken on behalf of the Plaintiff at the United

22 States Attorney's Office, District of Hawai'i, Room 6-100,

23 Prince Jonah Kuhio Kalaniana'ole Federal Building, 300 Ala

24 Moana Boulevard, Honolulu, Hawai'i, commencing at 1:09 p.m. on

25 Monday, August 6th, 2007, pursuant to Notice and Subpoena.

Page 2

1 BEFORE: B. KANOELANI COCKETT
 2 Certified Shorthand Reporter
 3 HI CSR NO. 379, CA CSR NO. 7995
 4

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6 APPEARANCES:

7 For Plaintiff: DAPHNE E. BARBEE, ESQ.
 8 1188 Bishop Street, Suite 1909
 9 Century Square
 10 Honolulu, Hawai'i 96813
 11

12 For Federal

13 Defendants: THOMAS A. HELPER
 14 Assistant U.S. Attorney
 15 United States Attorney's Office
 16 District of Hawai'i
 17 Room 6-100, Prince Jonah Kuhio Kalaniana'ole
 18 Federal Building
 19 300 Ala Moana Boulevard
 20 Honolulu, Hawai'i 96850
 21 tom.helper@usdoj.gov
 22
 23
 24
 25

Page 3

1 Also Present: Eugene (Bernie) Whitaker
 2 Transportation Security Administration
 3 Pacific Rim Supervising Council
 4 300 Rogers Boulevard, No. 45
 5 Honolulu, Hawai'i 96819
 6 and Kevin Burns
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1 (Reporter's Disclosure was displayed.)

2 MILAGROS I. DRAKE,
 3 Having been first duly sworn,
 4 testified upon her oath as follows:
 5

6 EXAMINATION

7 BY MR. HELPER:

8 Q. Would you state your name, please.

9 A. My name is Milagros Ian Drake, D-R-A-K-E.

10 Q. And how do you spell your middle name?

11 A. Ian, I-L-A-N.

12 Q. Maybe you should spell your first name, too,
 13 just for the record.

14 A. Milagros is M-I-L-A-G-R-O-S.

15 Q. And have you ever had your deposition taken
 16 before?

17 A. I would say, yes, during my divorce, (witness
 18 shakes head) but not related to this. I mean, I have -- I've
 19 been deposed before, if that is your question.

20 Q. Other than in connection with your divorce, have
 21 you been deposed?

22 A. No.

23 Q. Okay. How long ago was that deposition?

24 A. Oh, boy, 1983.

25 Q. Okay. Let me run over some of the basic ground
 rules for a deposition. It's been a while.

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1 A. Okay.

2 Q. A deposition is a sworn out-of-court question-
3 and-answer session, and you're sworn in with the same oath
4 that you're sworn in with if you were in court.

5 Do you understand that?

6 A. Um-hum, I understand.

7 Q. Okay. And even though it's sort of an informal
8 setting and there's no judge here, your testimony has the
9 same weight and significance as if it were given before a
10 judge and a jury.

11 Do you understand that?

12 A. I understand.

13 Q. Okay. A couple of rules that are different from
14 normal conversation. The big one really is only one person
15 can speak at a time because we have a court reporter here
16 taking down everything anybody says. And so you may know
17 exactly where I'm going with a question and what I'm asking
18 you and in normal conversation you're going to jump in and
19 answer it to save time. In a deposition it doesn't save
20 time. It takes more time because I have to repeat the
21 whole question.

22 So make sure I'm done with my whole question
23 before you start to answer, okay?

24 A. Okay.

25 Q. And you're doing great, way better than most

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1 witnesses already.

2 If at any point I cut you off and you're not
3 done with your answer because you're pausing when I think
4 you're done and I start asking you a question, just let me
5 know and I'll back off and let you finish your answer.

6 A. Okay.

7 Q. From time to time there may be an objection, but
8 that will probably just be for the record, and just go
9 ahead and -- ask you to let Ms. Barbee state her objection,
10 or if Ms. Barbee is asking you questions, to let me state
11 my objection and you'll probably go ahead and answer the
12 question.

13 I don't think we're going to be real long today,
14 but if at any point you need to take a break or you want to
15 stretch your legs, that's fine. Just let me know and we'll
16 go off the record, but unless both lawyers agree that
17 something is off the record, then the court reporter is
18 going to write it down.

19 Okay?

20 A. Okay.

21 Q. Do you have any questions before we start?

22 A. No.

23 Q. Okay. You were at one point a screener for the
24 Transportation Security Administration, right?

25 A. That's correct.

Page 8

1 Q. And what years were you -- you were at Honolulu
2 for a while?

3 A. Yes.

4 Q. Honolulu International Airport?

5 A. That's correct.

6 Q. And what years or the approximate dates of your
7 employment for TSA at Honolulu International?

8 A. It's around September, end of September. It was
9 the end of September 2002.

10 Q. Until when?

11 A. Until I transfer, oh, 2004, around I think I
12 transferred around August sometime, during the fall.

13 Q. And where did you transfer to?

14 A. I transferred to San Diego International Airport in
15 California.

16 Q. Okay. And how long did you work in San Diego
17 for TSA?

18 A. I officially submitted my resignation there on
19 January of this year.

20 Q. '07?

21 A. Yes.

22 Q. Okay. And did you hold the title of screener
23 the whole time you were at Honolulu?

24 A. Yes.

25 Q. And how about at San Diego: Did you hold any

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1 other title other than screener at San Diego?

2 A. No, that's the same, the same.

3 Q. Okay. Now, we're here today in connection with
4 a lawsuit filed by Raymond Ware against TSA.

5 When is the last time you spoke with Mr. Ware?

6 A. Last time I spoke with him, I would say I think I
7 met him maybe around February, March of this year.

8 Q. Okay. Where did you meet him?

9 A. We met for lunch at Honolulu Arts Academy.

10 Q. Oh, and did he contact you?

11 A. No, I contacted him.

12 Q. Okay. What was the reason for you contacting
13 him?

14 A. Just to say hello, and I was going to the Academy
15 so I said, "Hey let's do lunch." We were supposed to go out
16 with other -- other friends, also, but they did not show up.
17 So I'm a member at the Honolulu Arts Academy, so I was going
18 there and it's the only place that I believe -- know where we
19 can meet because I do not know where he's coming from at that
20 time.

21 Q. At some point did you learn that he had a
22 lawsuit against TSA, Mr. Ware had a lawsuit?

23 A. Yes, I was aware of that.

24 Q. Did you know that before the lunch or did you
25 find that out during the lunch?

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1 A. No, I know it before.
 2 Q. Okay. How did you know it from before?
 3 A. Even before I even moved to San Diego I know that
 4 he had filed a lawsuit.
 5 Q. Okay. Now, you and I spoke on the phone a
 6 couple of weeks ago, right?
 7 A. Okay, it was you. So, okay, now I place the face.
 8 Q. Okay. Somebody from the government called you a
 9 couple of weeks ago, right?
 10 A. Yes, yes.
 11 Q. They identified themselves as Tom Helper?
 12 A. Yes.
 13 Q. Okay. And what I'm going to do, I think, is
 14 sort of run through what I understood you to say during
 15 that conversation, and you tell me if I've got it right or
 16 not, okay?
 17 A. Oh, okay.
 18 Q. You, in your capacity as a screener for TSA, you
 19 personally had to be recertified and retested after about a
 20 year on the job; is that right?
 21 A. That's correct.
 22 Q. Okay. And that wasn't just -- as a matter of
 23 fact, it was all the screeners and all the screening
 24 supervisors at TSA Honolulu?
 25 A. At the time that we were recertifying I did not

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1 realize that the supervisors or managers are to be tested,
 2 also. I -- (Witness shakes head.)
 3 Q. Did you know at some point that all the
 4 screening supervisors had to be retested?
 5 A. Oh, at some point, yes, during -- you know, during
 6 those -- during the retesting, yes.
 7 Q. Okay. Now, you mentioned something about
 8 screening managers.
 9 In fact screening managers -- did you understand
 10 that they had to be retested or not, screening managers?
 11 A. No, I did not. I did not know that they had to be
 12 retested, too.
 13 Q. Okay. Well, do you know that -- is it today
 14 your belief that the screening managers had to be retested?
 15 A. No, I don't.
 16 Q. You don't know even as you're sitting here
 17 today?
 18 A. No, I don't.
 19 Q. Okay. But you do know as you sit here today
 20 that the screening supervisors had to be retested?
 21 A. Yes.
 22 Q. Okay. And Mr. Ware was in fact a screening
 23 supervisor, right?
 24 A. That's correct.
 25 Q. Back -- and this retesting occurred back in the

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1 fall of 2003?
 2 A. Yes, I believe that's correct.
 3 Q. Okay.
 4 A. Around that time, before the end of the year.
 5 Q. And just talking for a second about your
 6 personal experience, what happened with you? As I
 7 understand it, the first time -- well, the testing
 8 consisted of three different modules, three different
 9 phases, right?
 10 A. Yes.
 11 Q. Okay.
 12 A. Yes, if you count the X-ray, the written and the
 13 actual.
 14 Q. And the "actual" means a hands-on test, right?
 15 A. Yes.
 16 Q. And the first two portions, the X-ray and the
 17 written portions, those were given to you by employees of
 18 TSA, right, or do you remember?
 19 A. Yes. We go to a room and we -- you know, in a room
 20 where there are computers, and we had to take it there.
 21 Q. Okay. But those were given by TSA employees,
 22 the X-ray and the written portions?
 23 A. And I don't know whether -- I don't know whether
 24 they were actually employed by the TSA. I could not recall.
 25 Q. Okay, okay. And then the third phase, the

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1 hands-on phase was administered to you by employees of a
 2 contractor of TSA, right?
 3 A. That's correct.
 4 Q. And when we spoke on the phone the other day I
 5 think you didn't recall exactly who the contractor was, and
 6 your best recollection was that it was McDonnell Douglas?
 7 A. That's my recollection. I could be wrong.
 8 Q. Right.
 9 A. I know that they are supposed to be contractor or
 10 hired by TSA to administer the test. All I know is that they
 11 came from the mainland.
 12 Q. Okay. And, again, when you took the test with
 13 the contractor employed the first time, the hands-on
 14 portion, they told you at the end of it that you had not
 15 passed, right?
 16 A. That's correct.
 17 Q. And so after that you were sent out of the --
 18 and, I'm sorry, you were given the test in a room where you
 19 were the only person being tested, right?
 20 A. Well, there is three of us that were called, but we
 21 are taken into the -- into the area, this section where they
 22 are testing separately.
 23 Q. Right.
 24 A. So the others -- and I could not remember who the
 25 others were -- are seated, you know, kind of outside the area,

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1 the cubical where they are testing.
 2 Q. So nobody else, no other screener was present
 3 when you were being tested with the hands-on portion of the
 4 test, that's correct.
 5 A. That's correct.
 6 Q. And, similarly, you weren't present when
 7 anybody, any other screener or screening supervisor was
 8 given the hands-on portion of their test, right?
 9 A. Right.
 10 Q. Okay. So after the contractor employees told
 11 you that you hadn't passed, did you understand at that
 12 point that you would be given a second chance?
 13 A. No, I did not.
 14 Q. Did you learn at some point you would be given a
 15 second chance?
 16 A. At some point, yes.
 17 Q. And was it the same day or was it a different
 18 day?
 19 A. I think it was a different day if I can remember,
 20 because what happened --
 21 Q. No, go ahead.
 22 A. Because what happened was we were sent back on the
 23 line, and during that time then, you know, there was such a --
 24 like a -- oh, it's kind of like a chaotic time, I mean chaotic
 25 where when I went back to my line, my --

Page 15

1 Q. Your station?
 2 A. My station, yeah, and everybody is talking about
 3 this lavalava test. They called it lavalava test where you do
 4 like six steps how to wand somebody with a skirt, and they
 5 call it lavalava, I guess, because of the men when they wear
 6 that skirt.
 7 Q. Samoan --
 8 A. Yeah, yeah.
 9 Q. -- outfit, right?
 10 A. Yeah, and nobody heard anything about it, and
 11 that's what -- from what I understand then, that's what
 12 everybody's failing.
 13 Q. Okay. And so at some point did someone with TSA
 14 or with the contractor tell you you were going to be
 15 retrained and given a second chance to take the test?
 16 A. It was not them that actually told us. It was our
 17 supervisor and our leads because at that time they were taking
 18 out groups of people being shown -- in some of the gates that
 19 were empty, they take us back there in groups because they
 20 cannot just take so many on the line. Sometimes they close
 21 the security line and said, "Okay. You know, it's your turn
 22 now." So they go -- we go there and our leads or supervisors
 23 or assistant leads are the one who is showing us how to -- you
 24 know, how to -- supposedly how to do the wand and the
 25 steps, and then we were called again and I could not remember

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1 whether it was the next day that I was called to redo it
 2 because at that time the testers were there for several
 3 days --
 4 Q. Okay.
 5 A. -- maybe a week, and then we were retested.
 6 Q. Okay. And when you say that they didn't tell
 7 you that you would be retested, you mean the testers didn't
 8 tell you you would be retested? It was TSA employees who
 9 told you you would be retested?
 10 A. Yes, it was the TSA employees.
 11 Q. Your supervisors?
 12 A. Yes.
 13 Q. Okay. And then I think you described the
 14 process by which you were trained before the retesting, and
 15 as I understand it, it was not done individually. You were
 16 trained along with several other people.
 17 A. Yes, yes, we were trained along with several people
 18 until we actually went up, when I was called and some other --
 19 with other groups to go upstairs where the testers are. And
 20 then there in front of the -- in front of the tester she had
 21 to -- she showed me how to do it again.
 22 Q. When you say "she," who is "she"?
 23 A. The tester now, the one that came from the
 24 mainland, the one that's actually giving the test.
 25 Q. Okay.

Page 17

1 A. Okay. So you have to practice in front of her so
 2 several times until -- until you're comfortable, until I was
 3 comfortable. So when she asked me that, "Okay. Are you ready
 4 now?" You know, "You're doing well." I mean, you know, "Now
 5 is the actual test." So I probably --
 6 Q. And is -- go ahead.
 7 A. I probably did the practice over and over maybe
 8 six, seven different times.
 9 Q. In front of the tester?
 10 A. Of the testers, yes.
 11 Q. Okay.
 12 A. And then the tester said, "Okay. Now you're
 13 comfortable now. Now this is the actual test," and of course
 14 by that time, you know, you do it repeatedly many times, and
 15 now when they said, "This is the actual test now. Okay.
 16 You're done. You're perfect. Super. You're passed."
 17 Q. And this was a room where it was only you and
 18 the testers present?
 19 A. There is another gentleman in there with the
 20 tester, and of course maybe two, three people that went up
 21 with me are seated like, you know, off the side.
 22 Q. Okay. But when you're doing the retraining with
 23 the tester and the actual second test with the tester, were
 24 the other screeners watching? Were they present in the
 25 same room?

Page 18

1 A. No, they are not present in the same room.
 2 Q. Okay. So you're the only -- when you're in with
 3 the testers, you're the only TSA employee in the room at
 4 the time?
 5 A. Yes.
 6 Q. Okay. And is it accurate that before you went
 7 into the room with the testers you were also retrained off
 8 line by TSA supervisors?
 9 A. Yes.
 10 Q. Okay. And how long did that retraining last?
 11 A. Oh, probably 15, 20 minutes.
 12 Q. Okay. And then how long -- the repetition by
 13 the tester where -- sort of the practices in front of the
 14 tester before the actual test, how long did that take?
 15 A. Like I said, about six, seven times.
 16 Q. And how long does each time take?
 17 A. Um, I would say about three, five minutes.
 18 Q. Okay. So maybe anywhere from, I guess, 18 to 30
 19 minutes of practice with the tester before the actual test
 20 the second time; is that right?
 21 A. Yeah, I would say so.
 22 Q. Okay. And, now, you said about the way other
 23 people were treated and how other people were trained or --
 24 I'm sorry.
 25 Your knowledge about how other people were

Page 19

1 tested comes from what other people told you as opposed to
 2 you seeing it, yourself, right? You didn't see anybody
 3 else tested; is that correct?
 4 A. That's correct.
 5 Q. Okay.
 6 A. Yeah.
 7 Q. So if somebody passed or didn't pass their first
 8 time or their second time, the way you would know that is
 9 through that person telling you?
 10 A. Yes, and, you know, people talking.
 11 Q. Right. And at some point you heard Mr.
 12 Kamahele -- well, who is Mr. Kamahele?
 13 A. At the time Mr. Kamahele, from what I understand at
 14 that time, was like second in command below Mr. Hayakawa.
 15 Q. Second in command of TSA?
 16 A. Of TSA in Honolulu, yes.
 17 Q. Okay. And you heard him say -- talk about his
 18 concern that a lot of people were failing the test the
 19 first time around, right?
 20 A. That's correct.
 21 Q. And so he wanted to make sure that everybody was
 22 trained before they went up for their second test?
 23 A. That's correct.
 24 Q. Okay. And did you understand that your second
 25 try would be the last try? In other words, there was no

Page 20

1 third try allowed?
 2 A. I did not know that.
 3 Q. Okay. Did you find that out later?
 4 A. I never really find that out because on the second
 5 time that I was actually tested, you know, I passed, so. . .
 6 Q. And you don't know of anybody who was allowed to
 7 take the test more than twice; is that correct?
 8 A. That's correct.
 9 Q. Okay. Do you know -- you were not present at
 10 the time Mr. Ware was tested for either -- any of his
 11 tests, right?
 12 A. That's correct.
 13 Q. Were you present at any point while he was being
 14 retrained in between the tests or before the tests?
 15 A. No.
 16 Q. Okay. And did you learn at some point that he
 17 had failed the first time around?
 18 A. No, because I did not really -- I did not really
 19 know that he was even being tested or that he's taking the
 20 test.
 21 Q. Okay. When did you find out that he was taking
 22 the test?
 23 A. I did not know when. I did not find out anytime
 24 that he was taking the test. All I found out was that when he
 25 was -- they said that he was escorted out of the airport.

Page 21

1 Q. Okay.
 2 A. And, you know, everybody was, like, wondering why,
 3 and there was -- there was talk, you know, at that time that,
 4 "Oh, he failed the test," so. . .
 5 Q. And did you ever learn any more details about
 6 how he failed or why, either from him or from anyone else?
 7 A. Oh, not -- I would say that not really because at
 8 that time, I mean, people were -- people were talking that,
 9 "Oh, he failed the test." That's why he was out, and then
 10 when he never came back they said, "Oh, he's administrative
 11 leave." So nobody was really sure as to why he is gone.
 12 Q. Did you ever talk to him about what happened?
 13 A. Yes, I did.
 14 Q. And what did he tell you?
 15 A. That he said that he failed the test.
 16 Q. When was this conversation?
 17 A. Oh, gosh, before I left for San Diego.
 18 Q. Okay.
 19 A. I have invited him and his wife and another couple
 20 for dinner at our house, but that fell through, and I was
 21 going -- I think it was one of my trips that I'm with a
 22 friend, and we met at the restaurant to say good-bye, that I'm
 23 saying that I'm going because at that time, too, I have asked
 24 him to give me a -- if it's all right if I can use him as --
 25 you know.

Page 22

1 Q. A reference?

2 A. A reference, yeah, as a doctor -- yes, as a
3 reference, and I was trying to find out if he knew -- I was
4 trying to find another lady that I work with, Susan, her name.
5 I was asking him if he knew Susan's phone number. So we
6 have -- meet us for lunch, and that was -- and that was, I
7 would say, 2004.

8 Q. 2004?

9 A. Yeah.

10 Q. Okay. So the first time you learned any details
11 about what happened with Mr. Ware's failing of the test was
12 in 2004?

13 A. That why, yeah, that he failed that test, yeah.

14 Q. And did you pass -- you, personally, did you
15 pass the written part of the test the first time?

16 A. Yes.

17 Q. And did you pass --

18 A. The X-ray.

19 Q. The X-ray part the first time, too?

20 A. Yes.

21 Q. Okay. And at some point when you did talk to
22 Mr. Ware about what happened with his test, did he -- did
23 you and he kind of compare notes about what happened, like
24 you told him what happened with you, and he told you what
25 happened with him with the tester?

Page 23

1 A. No, not really, we didn't. It was just brought up
2 in the conversation that I said, "Well, what happened?" He
3 said, "Well, I -- they told me" -- he said that he did not
4 pass the test, and I said, "Well, I did not realize that, you
5 know, you are being tested." Because at that time I did not
6 really know that, you know, that was the cause of his not
7 coming back or being let go.

8 Q. Did he say whether he had been given the same
9 treatment you were in terms of getting practices before the
10 second test?

11 A. No. We really did not talk about -- you know, the
12 conversation did not go towards, you know, that.

13 Q. Okay. Did you think at the time that you were
14 being given the test, the hands-on portion of the test, did
15 you think it was unfair in any way?

16 A. Well, if I think it unfair at that time, it was
17 because we were never trained. That was not part of our
18 training, and for the testers to come into Honolulu and give
19 us that kind of exam when we've never been trained before,
20 yes, for that I would thought that it wasn't fair.

21 Q. And is that -- you're talking specifically about
22 the lavalava portion of the test?

23 A. That's correct.

24 Q. And were there a bunch of other tests in the
25 hands-on portion besides the lavalava test?

Page 24

1 A. Oh, yes.

2 Q. So it was only the lavalava test that you
3 thought was unfair?

4 A. Yes.

5 Q. How many other portions to the hands-on test
6 were there other than the lavalava portion?

7 A. Oh, we have how to do the wandering and how to
8 properly check the baggage, how to make the swipes of -- you
9 know, of how to make the swipe of the luggage. What else?
10 And testing, you know, how to wand and how also to pat down,
11 what we call pat down the passenger. I mean, you actually
12 using your hands and feeling.

13 Q. Okay.

14 A. Yeah.

15 Q. Did Mr. Ware tell you which portion of the test
16 it was that he had failed?

17 A. He really did not. He really did not tell me.

18 Q. Okay. I'm going to hand you what I'll mark as
19 document Exhibit 1, and you've seen this before. This is
20 your declaration.

21 (Defendants' Exhibit No. 1
22 was marked for identification.)

23 BY MR. HELPER:

24 Q. And let me ask you if you recognize this Exhibit
25 1?

Page 25

1 A. Yes.

2 Q. That's the declaration you signed in connection
3 with this litigation?

4 A. Yes.

5 Q. And that's your signature on the second page?

6 A. Yes.

7 Q. You're not looking at the second page.

8 A. Oh, yes.

9 Q. Okay. When you received your Subpoena in this
10 case, I think there was a box checked for asking you to
11 bring any documents you had that were relevant to the case.

12 A. Yeah.

13 Q. And did you bring any documents with you?

14 A. No.

15 MS. BARBEE: Those documents.

16 THE WITNESS: Just the documents. It was my -- the
17 Declaration, my Declaration and the -- you know, my Subpoena
18 to appear.

19 BY MR. HELPER:

20 Q. And then you also brought a couple of file
21 certificates, the Notice of Taking Deposition?

22 A. Yeah, yeah.

23 Q. And the Certificate of Service.

24 A. Yeah.

25 Q. Okay.

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1 A. Those are the only ones I have.
 2 Q. So is it fair to say you don't have any other
 3 documents that are relevant to the testing you underwent in
 4 the fall of 2003 for recertification?
 5 A. No, I don't, I don't have any of that documents.
 6 Q. Okay. Did you ever have any documents? Did you
 7 ever get your test results?
 8 A. Probably. I cannot remember.
 9 Q. Okay.
 10 A. Because we did the -- you know, the hand -- I mean
 11 the writing test. They are -- you know, you know, they don't
 12 give you any paperwork with that, just fail and pass, and then
 13 the X-ray just a paper.
 14 Q. I want to ask you some specific questions about
 15 the paragraphs in your Declaration, so if you get that
 16 Exhibit 1 out.
 17 A. Okay.
 18 Q. Paragraph 4, "I am" -- it says, "I am aware that
 19 in 2003 when TSA required all screeners to take the
 20 recertification test, almost all screeners did not pass the
 21 test."
 22 And is your basis for saying that just people
 23 talking around the checkpoint and saying, "I didn't pass
 24 either"?
 25 A. Yes, because we were -- like I said before, we were

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1 taken to be retrained about that portion of the test, and by
 2 that time, I think on the second day, I think it was then that
 3 I overheard Mr. Kamahele that -- because when you failed a
 4 portion of the test, you were automatically taken out from the
 5 line, and so, you know, that's when I overheard him say that,
 6 "Oh, what do they want me to do, close down the airport?"
 7 because so many lines then were being closed. You know, once
 8 you failed the test, I mean, you are not to work. You can
 9 come in, but we're not able to do any -- you know, they are
 10 taking you out of the line. You cannot work.
 11 Q. Okay. So after you failed the test for the
 12 first time, you couldn't do any passenger screening, right?
 13 A. You. . .
 14 Q. After you failed the test for the first time,
 15 you couldn't do any passenger screening, right?
 16 A. That's correct.
 17 Q. Okay. And anybody who failed the test the first
 18 time was in the same situation; they couldn't do any
 19 passenger screening either, right?
 20 A. That's correct.
 21 Q. Okay. And I think later on you estimate 99
 22 percent of the screeners failed the hands-on
 23 recertification test. That's what you say in paragraph 6.
 24 How many screeners, do you know, yourself, did
 25 not pass the recertification test the first time?

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1 A. Well, I would say most of the people that I work
 2 with in my checkpoints.
 3 Q. So how many people is that?
 4 A. Well, at that -- when I say at that time, there's
 5 probably about 18, 20 of us.
 6 Q. Okay.
 7 A. And maybe the 99 percent is a little bit high for
 8 that. There's -- because we had to keep at least one line.
 9 There's, you know, at least five people had to be on the line.
 10 Q. Okay. So of the 18 or 20 people, there are 18
 11 or 20 people on your checkpoint, right?
 12 A. Yeah, at some times.
 13 Q. And to keep the checkpoint open, you had to have
 14 at least five people at the checkpoint, right?
 15 A. Yeah. Sometimes there's only five.
 16 Q. But five is the minimum, right?
 17 A. Yeah, sometimes. Sometimes. . .
 18 Q. And as far as you are aware, your checkpoint
 19 never closed, right?
 20 A. No, it never closed.
 21 Q. So that means that at all times there had to be
 22 at least five people who had passed the recertification
 23 test on checkpoint, right?
 24 A. Well, I did not -- I did not know that because at
 25 that time we were taken -- I mean, at the time that we are

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1 being tested, you know, some people are being called from
 2 different checkpoints to open up, and some people are being
 3 sent, you know, in upstairs for the testing. Some people are
 4 being called to do the retraining, and I do not know those
 5 people that were being retrained by the supervisors or by the
 6 leads, you know. I do not know whether they've been called
 7 during that day to go and retake the test, so that's not --
 8 you know.
 9 Q. Okay. How many people of the 18 to 20 who
 10 worked your checkpoint do you know for a fact as you sit
 11 here today failed the recertification test the first time?
 12 A. I would say, I would say about half of the people
 13 that were there at that time.
 14 Q. Okay. And for the people who were working the
 15 other checkpoint or other portions of the airport other
 16 than your checkpoint, do you know, have any idea how many
 17 of them failed?
 18 A. No, I don't.
 19 Q. Okay. But you're aware from Mr. Kamahele's
 20 statement -- and you heard Mr. Kamahele make the statement?
 21 A. Yes.
 22 Q. Where were you?
 23 A. I would say I was walking and passing him, and he
 24 was in the -- he was in the -- you know, around with three or
 25 four people with him in the checkpoint.

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1 Q. And what were his -- as close as you can
2 remember, what were his exact words?
3 A. He said, "What do they want me to do," he said,
4 "close the entire airport?"
5 Q. At any time did you hear Mr. Kamahele say how
6 many people or how many screeners were failing the test the
7 first time around?
8 A. No, I did not know that. He was just upset
9 because, from what I understand then that, you know, once you
10 failed the test, you know, you stay off the line.
11 Q. Did you ever hear Mr. Kamahele say anything
12 about a percentage of people who were failing the test the
13 first time?
14 A. No, I did not.
15 Q. Okay. But your impression from the way he said
16 it was that it was a lot?
17 A. Oh, yes, yes, yes. He was very upset.
18 Q. Okay. But other than saying "a lot," a lot of
19 people were failing the recertification test the first
20 time, nothing he said gives you any impression as to what
21 percentage or how many; is that correct?
22 A. That's correct.
23 Q. Okay. Paragraph 7 says, "The recertification
24 test was given in an arbitrary subjective manner to the
25 screeners. Whether we passed or failed was up to the

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1 testers."
2 Is that again a reference to the lavalava
3 portion of the test only?
4 A. Yeah, the hands-on. It's not exactly just the only
5 lavalava, but it's the whole hands-on.
6 Q. You thought that was arbitrary?
7 A. Yes, because it's really up to them whether we're
8 doing it, you know, right or not.
9 Q. The first time you failed the test, the only
10 portion of the test you failed was the lavalava portion?
11 A. Yes, because I did not know how to do it.
12 Q. Okay. So they passed you on everything else,
13 correct?
14 A. That's correct. That's the only portion I had to
15 repeat and repeat and repeat.
16 Q. Okay. And then after you'd had enough practice,
17 you passed the lavalava portion, right?
18 A. That's correct.
19 Q. Okay. As far as your own testing, they graded
20 the test accurately on both occasions, right? I mean, you
21 really did fail the lavalava test? Not that it's your
22 fault, but you really did fail it, correct?
23 A. On the first try?
24 Q. Right.
25 A. Yeah, yeah.

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1 Q. And then the second time you passed it, right?
2 A. That's correct.
3 Q. Okay. But you don't dis -- do you think that
4 you actually did the lavalava portion of the test correctly
5 the first try?
6 A. No, I did not because, like I say, I did not know
7 how to do it the first time.
8 Q. Okay. So in paragraph 7 you said that, "The
9 recertification test was given in an arbitrary subjective
10 manner."
11 You never actually saw the testers doing
12 anything arbitrary or subjective; is that correct?
13 A. I need to make a -- I need to make a correction in
14 here because the "arbitrary," that was -- the "arbitrary" --
15 the "subjective," I understand that, but I think the
16 "arbitrary" was when I was taking this, that that word -- you
17 know, I don't exactly what -- you know, I think when the
18 deposition -- I mean when this thing was taken, the attorney
19 used that "arbitrary". "Subjective," I understand the
20 "subjective". It's supposed to be, you know, it's up to you.
21 Q. Right.
22 A. It's your own decision, right.
23 Q. But "arbitrary" is not really a word that you
24 think is accurate as you sit here today?
25 A. Yeah.

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1 Q. Correct?
2 A. The arbitrary, the meaning of it in what you're --
3 you know, explain to me what "arbitrary" is to you.
4 Q. Well, I think I have to ask you because you
5 signed a Declaration with that word in it.
6 Did you have any understanding of the word
7 "arbitrary" at the time you signed this Declaration, or is
8 that something that sort of you're reading this and it
9 looks more or less correct so you signed it, and now that
10 you see the word "arbitrary" you're sort of not so sure
11 about that?
12 A. Yeah, that's the "arbitrary". "Arbitrary."
13 Q. Okay. So you don't -- as you sit here today,
14 you're not certain of what the definition of the word
15 "arbitrary" is; is that fair to say?
16 A. Okay. That's fair to say.
17 Q. In paragraph 8 -- I'm sorry, let me go back to
18 that paragraph 7 for a second.
19 A. 8?
20 Q. No, paragraph 7.
21 A. Okay.
22 Q. What you thought was unfair about the way you
23 were tested is that they gave you a test in an area where
24 you'd never been trained, the lavalava portion of the test,
25 right?

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1 A. That's correct.

2 Q. Other than that, you didn't think there was
3 anything unfair about the testing process; is that correct,
4 for yourself?

5 A. For myself I would only -- I mean, I still think
6 that it is unfair. I would say even though, you know, given
7 the chance to pass the test, to pass that lavalava test, I can
8 still say that it's unfair because I -- you know, if you're
9 given the test and you failed, I mean, everybody should have
10 been failed, not given a second chance.

11 Q. So do you think it was unfair to give people a
12 second chance?

13 A. On that, with the actual testing.

14 Q. Okay. I'm not sure I understand what you're
15 saying.

16 Are you saying that the retraining was unfair?

17 A. What I'm -- it's just me. If I fail the test, it
18 was unfair for them to test us for the things that we were not
19 trained to begin with, but it's still unfair to pass a test
20 and given a second chance. It was unfair for them to do both.
21 That's how I feel personally.

22 Q. Okay. Are we still talking about just the
23 lavalava portion of the test? If you just take the
24 lavalava portion out of the test completely --

25 A. Okay.

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1 Q. -- did you feel like the whole rest of the
2 testing process was fair?

3 A. It is fair, yes.

4 Q. Okay. Okay. Looking at paragraph 8 the second
5 sentence says --

6 A. Um-hum.

7 Q. -- "As a result, Mr. Kamahele ordered the
8 screeners had to be retrained and retested until they
9 passed."

10 Is that an order that you heard Mr. Kamahele
11 give personally, or is that just something you heard
12 through the grapevine was going to be the procedure?

13 A. That was -- that was you can say through the
14 grapevine, but through our supervisors and our leads.

15 Q. Okay. And was it your understanding that the
16 procedure was going to be what actually happened, which is
17 you get a lot of practice outside the presence of the
18 testers and then more practice with the testers and then
19 the second test?

20 A. That's correct.

21 Q. Okay. So that's what they told you was going to
22 happen? That's what your supervisors told you what was
23 going to happen after you failed the test the first time?

24 A. They did not tell us actually what's going to
25 happen. They just told us that we are going to be retrained.

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1 Q. Okay.

2 A. But to actually telling us that, you know,
3 somebody's telling us, you know, we're going to do it and "do
4 this" and "do this" and, "Then you go in front of the tester,
5 and if you do it," no, they did not tell us that. We were
6 just -- they just told us that we had to be -- we had to be
7 retrained, and then you have a second chance to go and be
8 tested again, but I did not know then when I went to the
9 tester that I will be given another chance until I felt
10 comfortable, and when the tester told me that, "Okay. Now,
11 you know, you're doing fine, everything. Now this is the
12 actual test."

13 Q. Okay.

14 A. I did not know before I went up there that that's
15 going to happen.

16 Q. Okay. And in the next sentence, paragraph 8,
17 "TSA screeners retook the test several times, more than two
18 times over, until we passed."

19 And what you're talking about there is the
20 practice sessions, right?

21 A. The practice session, yes.

22 Q. Okay. So you were given the test repeatedly in
23 a setting where you were told this doesn't count, correct?

24 A. That's correct.

25 Q. And then you took the test once more where it

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1 did count?

2 A. That's correct.

3 Q. Okay. And you were only allowed to retake the
4 test once where it counted, right, retake?

5 A. On the second, on the second chance.

6 Q. Right.

7 A. That's correct.

8 Q. And you don't know of anybody who was allowed to
9 retake the test more than once where it counted, right?

10 A. No, I don't.

11 Q. Okay. So I'm correct that you don't know of any
12 person who was allowed to retake the test more than once,
13 that's correct?

14 A. On the second time? Okay. After you failed and
15 then you take it again?

16 Q. Right.

17 A. Given another chance?

18 Q. Yes.

19 A. Do I know. . .

20 Q. Do you know of anybody who took the test where
21 it counted more than twice?

22 A. No.

23 Q. Okay. In paragraph 11 you say that -- I'm
24 sorry, let me back up a second.

25 Do you know how many screeners and screening

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1 supervisors were retested at Honolulu in the fall of 2003?
 2 A. I know that he was not -- he was not a supervisor
 3 then, because it's kind of weird at that time who are the
 4 supervisors, who are the lead and so on, so forth, but, no, I
 5 do not know of any other supervisors because some of the leads
 6 that we have turned to be supervisors so -- or sometimes they
 7 can be supervisors designated for three or four months, so I
 8 really do not know if they are as actual supervisors besides
 9 Mr. Ware.

10 I know that Victoria, who is our -- who is our lead
 11 at that time, and somebody else, Bernadette. Bernadette was
 12 supposed to be the lead and she was the one who came in to our
 13 checkpoint and replaced Mr. Ware.

14 Q. Okay.

15 A. They are not officially supervisors yet at that
 16 time.

17 Q. Okay. My question, I think, was a little bit
 18 different from what you're answering.

19 My question is do you know how many people had
 20 to take the test in Honolulu in the fall of '03, the
 21 recertification test?

22 A. I would expect all of us screeners, yeah.

23 Q. And how many screeners were there in Honolulu in
 24 the fall of '03?

25 A. I think there's over -- for these employees I would

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1 say there's over 400, 400 to 600 --

2 Q. Okay.

3 A. -- numbers of us.

4 Q. Okay. And of those 4- or 600 people, maybe 15
 5 or so told you personally that they hadn't passed the
 6 recertification test on the first try, right?

7 A. Yes.

8 Q. And for the remainder of the employees of the
 9 400 to 600 employees, you assume from what Mr. Kamahele
 10 said that a lot of them didn't pass either, but you don't
 11 know the numbers; is that fair to say?

12 A. That's fair to say, yes.

13 Q. Okay. And in paragraph 11 --

14 A. Um-hum.

15 Q. -- you say, "The fact that he," referring to Mr.
 16 Ware --

17 A. Yes.

18 Q. -- "was the only screening supervisor terminated
 19 for failing the recertification test raised concern."

20 How do you know he was the only -- or what makes
 21 you think he was the only screening supervisor terminated
 22 for failing the recertification test?

23 A. Well, because that was the -- when he did not come
 24 back, that was the whole talk, that he was the only one that
 25 did not passed.

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1 Q. Did you ever hear of a Richard Kidani? Have you
 2 ever heard the name Richard Kidani before?

3 A. Hum-um, no.

4 Q. And actually that's another rule I forgot to
 5 tell you at the beginning of the deposition. Don't say
 6 "um-hum".

7 A. "Yes" or "no".

8 Q. Yes, "yes" or "no".

9 A. Sorry.

10 Q. No, you're doing much better than most people
 11 still.

12 So you've never heard of Richard Kidani?

13 A. I never heard of him. I may know his face,
 14 but . . .

15 Q. How many screening supervisors were there at
 16 Honolulu in the fall of '03? Do you have a rough estimate?

17 A. I don't know, maybe 20, 25.

18 Q. Okay.

19 A. I'm not -- like I say, it was really crazy.

20 Q. And if one of those supervisors in addition to
 21 Mr. Ware was terminated for failing the recertification
 22 test in the fall of '03, would you necessarily know that?

23 A. There probably will be a big talk about somebody,
 24 excuse me, canned, because of not passing.

25 Q. Okay. And so you basically assumed that because

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1 Mr. Ware is the only person -- I'm sorry, the only
 2 screening supervisor that you heard about being terminated
 3 for failing the recertification test, you think he was the
 4 only one; is that right?

5 A. That's correct.

6 Q. Okay. In the Declaration that you signed, is it
 7 fair to say that this was -- that you talked to Ms. Barbee
 8 before you signed this; is that correct?

9 A. Yes.

10 Q. And then she typed it up, or someone with her
 11 office maybe typed it up and gave it to you to sign after
 12 your conversation with Ms. Barbee; is that right?

13 A. That's correct.

14 Q. Okay. So you didn't type this up, yourself,
 15 correct?

16 A. No, I did not.

17 MR. HELPER: If we could just take a two-minute
 18 break.

19 MS. BARBEE: Um-hum.

20 THE WITNESS: Okay.

21 (Recess was taken from 2:01 to 2:06 p.m.)

22 MR. HELPER: I just have one. Back on the record.

23 Q. Just looking at your Declaration, paragraph 3
 24 says, "I never observed Mr. Ware take any sweaters or
 25 jackets from any passengers, nor treat them with

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1 disrespect. Any statements saying I observed this is
2 false."
3 What caused you to write that paragraph?
4 A. What caused me to write that paragraph, well, when
5 I was -- when I went to meet with Attorney Daphne at her
6 office, the day that I signed this she had asked me the
7 question because -- and then she showed me, she showed me a
8 paper that somebody, somebody used my name as a witness that
9 I, you know, saying that I witnessed that, that I had given
10 that statement.
11 You remember that?
12 MS. BARBEE: (No audible answer.)
13 MR. HELPER: We're just going to get your best
14 testimony. It's not her deposition.
15 THE WITNESS: Yeah. I'm sorry, yeah.
16 BY MR. HELPER:
17 Q. Was there -- did you ever recall anything to do
18 with Mr. Ware and a jacket or a sweater?
19 A. No.
20 Q. Okay. Did you ever tell Mr. Ware that
21 somebody -- well, do you know somebody named Talbot, a
22 checkpoint supervisor?
23 A. What's his first name?
24 Q. I don't know. I'm looking at a document that
25 refers to CSS Talbot.

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1 (Mr. Helper conferred with Mr. Burns.)
2 MR. HELPER: Let me just read you the statement
3 which I believe is a statement written by Mr. Ware.
4 Q. "On Monday, 3-24-03, at about 13:50, screener
5 Drake approached me and told me that I needed to be
6 careful. I asked her why. Drake stated that CSS Talbot
7 told her on Saturday, 3-22, that I stole a jacket and that
8 I always take things home that have been confiscated. He
9 further stated that he was going to watch my butt."
10 Does that refresh your recollection about
11 anything, any conversation with Mr. Ware?
12 A. (Witness shakes head.) No.
13 Q. Okay. So you don't remember ever approaching --
14 well, I'm sorry.
15 Do you remember ever approaching anyone and
16 telling them that they needed to be careful because of
17 something to do with stealing a jacket?
18 A. No, I don't remember.
19 MR. HELPER: Counsel, am I right? This is Mr.
20 Ware's account of an event?
21 MS. BARBEE: That's his handwriting, yeah.
22 MR. HELPER: Okay. And I guess we need to make
23 this an exhibit now, Exhibit 2. I'm going to have to pull
24 this out of here, get it to you.
25 (Defendant's Exhibit No. 2

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1 was marked for identification.)
2 BY MR. HELPER:
3 Q. And just to be clear so the record is clear,
4 Exhibit 2 is a portion of Plaintiff's Exhibit 4 attached to
5 their Concise Statement in Opposition to Defendants' Second
6 Motion For Dismissal and Summary Judgment.
7 And for the record, I'm going to say that I
8 think this is represented to be a statement by Mr. Ware
9 regarding a conversation he says he had and the statement
10 with Ms. Drake.
11 A. With me?
12 Q. And just to make sure the record is clear again,
13 let me ask you to look at this document which is entitled
14 Incident Report, two pages, and ask you if you've ever seen
15 that before?
16 A. (Witness complies.) No, I don't remember that at
17 all.
18 Q. Okay. And you've never seen this document
19 before, I take it.
20 A. No.
21 Q. Correct?
22 A. That's correct.
23 MR. HELPER: Okay. That's all I have.
24 MS. BARBEE: Could I just ask a few follow-up
25 questions?

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1 MR. HELPER: Sure.
2 EXAMINATION
3 BY MS. BARBEE:
4 Q. Ms. Drake, you mentioned when you first gave the
5 deposition that "we were sent back on line" after you
6 failed the test.
7 Who is "we"?
8 A. Some of the screeners that were with me at that
9 time. No, we were not -- we were sent back to our checkpoint,
10 but not on the line.
11 Q. Okay. Who is "we"? Can you name them?
12 A. Oh, I really could not recall who are those people
13 with me at that time.
14 Q. How many were they?
15 A. There was -- there were -- I know there were three.
16 Q. And all three of you were sent back?
17 A. Well, when?
18 Q. To your checkpoint, but not the line?
19 A. That's correct.
20 Q. What is the line?
21 A. The line is where the actual checkpoint where the
22 passenger comes through, and we are standing there. You know,
23 you're actually doing your job type of thing.
24 Q. All right. So then you assumed the three with
25 you did not pass the test because all of you were not

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1 allowed to be in the line?

2 A. That's correct.

3 Q. Okay. When you heard Mr. Kamahele make the
4 statement, "What do you want me to do, close the whole
5 airport?" was he talking to the testers?

6 MR. HELPER: Let me object. I think that misstates
7 the witness' testimony in terms of I think she said, "What did
8 they want me to do," not, "What do you want me to do?"

9 BY MS. BARBEE:

10 Q. Okay. What do you recall about that statement?

11 A. That statement Mr. Kamahele said, "What do you want
12 me to do, close the entire airport?" because at that time, you
13 know, supposedly a lot of us are failing and that we cannot go
14 back on the line.

15 Q. Did you hear any other expressions by Mr.
16 Kamahele concerning the test, the recertification test?

17 A. That's all I -- that's all I heard him say except
18 that I just gathered from our leads and supervisors that we
19 are ordered, they were ordered by Kamahele to, you know,
20 retrain us, but not actually a word straight from Mr.
21 Kamahele.

22 Q. Okay. You mentioned a female gave you the test;
23 is that right?

24 A. That's correct.

25 Q. Could you describe -- and you said a male was

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1 with her; is that right?

2 A. That's correct.

3 Q. Would you describe those two testers; tall,
4 short?

5 A. Well, the gentleman actually is off the side and
6 because he is a -- he is his (indicating) normal build, I
7 guess, maybe about five -- five-seven. I cannot really
8 picture him right now.

9 The lady was the one who was actually giving me the
10 practice test and the actual test, she is maybe about five --
11 five-five, skinny, maybe about your build.

12 Q. Made my day.

13 MR. HELPER: You're under oath here. That was a
14 joke.

15 BY MS. BARBEE:

16 Q. Did they give you names.

17 A. They may have, but I cannot recall the name right
18 now.

19 Q. Did they tell you what company they worked for?

20 A. No.

21 Q. Okay. Going back to paragraph 7 where you were
22 asked about your statement that the test was given in an
23 arbitrary subjective manner to the screeners, what did you
24 mean?

25 A. Well, this No. 7 -- and I know I signed this and, I

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1 mean, you typed this. The recertification test was given in a
2 arbitrary subjective manner, I would just strike the
3 "arbitrary" because that's a word that I normally do not use.
4 The "subjective manner," what I meant about that is that it's
5 really up to the tester whether we pass or not.

6 Q. Okay.

7 A. It's subjective, it's --

8 Q. Okay. Was there any videotape which would
9 objectively show that someone failed or passed?

10 A. No.

11 Q. Okay. Were you aware of screeners that took the
12 test over and over again?

13 A. No.

14 Q. With regards to your conversation with Mr. Ware
15 and about the recertification test, did he tell you that
16 the testers told him he failed?

17 A. I do not remember.

18 Q. Did he tell you that he felt he did not fail?

19 A. No. He just said to me that he failed.

20 Q. Okay. Did he tell you why he failed?

21 A. He told me that he failed the lavalava test, and
22 that's about it.

23 Q. Okay. Did he tell you this was something that
24 was told to him by the testers?

25 A. No, he did not say that. He did not elaborate.

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1 Q. Okay. Did you ask him whether the female tested
2 him?

3 A. No, I did not.

4 Q. Now, you also wrote in the Declaration that you
5 had concerns about retaliation, whether Mr. Ware was
6 retaliated against.

7 Why did you have that concern?

8 A. Why did I have that concern, because I knew that he
9 had a complaint, I think, filed with the EEO, I think, prior
10 to our testing.

11 Q. And, in fact, did you write any letters on his
12 behalf with the EEO?

13 A. Not that I recall.

14 Q. Okay. What was his work like when you worked
15 with Mr. Ware?

16 A. He was I would say a very, very thorough, very
17 professional in many, many ways. He seems to be the --
18 (indicating) the only one amongst the supervisors there that
19 they run to to -- if we have -- say if we have any problems,
20 they go to him for interpretations of our SOP, and he's always
21 telling us that we're doing a good job, because we seem to
22 do -- our line, we process a lot of passengers in a very
23 timely manner and with less, you know, problems compared to
24 the other -- to the other checkpoints.

25 MS. BARBEE: Okay. Thank you.

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FURTHER EXAMINATION

MR. HELPER: Just a few follow-ups on that.

Q. Was Mr. Ware ever your immediate supervisor on the checkpoint?

A. Yes.

Q. How many different supervisors did you have during the course of your time at TSA Honolulu?

A. Maybe five, six. They -- because, yeah, what happened is they move us around.

Q. Okay. Anybody else -- and you thought Mr. Ware was pretty good?

A. Oh, yes.

Q. Anybody else that you thought was pretty good?

A. There's a lady. She's -- I cannot recall her name right now. She's Filipina. She's also good, and another supervisor, his name is, I think, Michael. I know that there was -- early on was another supervisor.

Q. And these were all supervisors who you worked under directly?

A. Yes, yes. They are from the original -- because there's a bunch of them that came from the mainland and initially came to Honolulu to, you know, to train us, work under.

Q. Does the name Michael Botelho, Botelho, does that ring any bells with you?

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A. Yes.

Q. You think that's the Michael who you remember being a good screening supervisor?

A. I do not know his last name, but there is a Michael.

Q. How about Estella Malione?

A. Yes, yes, that's Estella, that's right.

Q. That's the name of the Filipina supervisor that you liked?

A. Yes, yes, yes, yes. Although I have not really have that much pleasure working under her. Maybe I -- you know, a couple of occasions.

Q. Okay. And how many times did you work under Mr. Ware?

A. Oh, gosh, a lot of time because I was -- I was transferred to the checkpoint, and he is the -- he is a supervisor for the p.m. on my shift.

Q. More than a couple times a week over the summer of 2002; do you think?

A. Oh, yes.

Q. Okay.

A. Um-hum.

MR. HELPER: Okay. Thank you.

FURTHER EXAMINATION

MS. BARBEE: Wait, just one follow-up on Mr.

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Helper's follow-up.

THE WITNESS: Yes.

BY MS. BARBEE:

Q. You said officially a group of people came from the mainland to train the screeners?

A. That's correct.

Q. And wasn't Mr. Ware one of the people that came from the mainland to train the screeners?

A. That's what I understood, yes.

Q. And did he train you?

A. Yes.

MS. BARBEE: Okay. Thank you.

FURTHER EXAMINATION

MR. HELPER: Okay. Now I have to ask.

Q. He was one of the people who trained you, right?

A. Yes.

Q. How many others trained you?

A. Oh, how many others trained us, not -- because we have initial training before we were, you know, on line. I mean, before we actually, you know, did the actual job we have training. It is part of -- you know, after they hired us, you know, we had to go through a training.

Q. Is it fair to say Mr. Ware was one of many people who gave you training?

A. Yes, I would say that.

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MR. HELPER: Okay.

THE WITNESS: Okay.

MR. HELPER: Thanks.

MS. BARBEE: Okay. No further questions.

MR. HELPER: Now we really are done.

THE WITNESS: Geez.

MS. BARBEE: Okay.

(Whereupon the deposition was concluded at 2:25 p.m.)

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WITNESS CERTIFICATE

I, MILAGROS I. DRAKE, hereby certify that I have read the foregoing typewritten pages 1 through 54, inclusive, and corrections, if any, were noted by me, and the same is a true and correct transcript of my testimony.

Dated this ____ day of _____, ____

MILAGROS I. DRAKE

Signed before me this ____ day of _____, ____

_____, Notary Public

My commission expires: _____

RAYMOND WARE vs. SIDNEY HAYAKAWA, CIVIL NO. 04-00671 HG LEK
Taken Monday, August 6th, 2007, by B. Kanoelani Cockett
HI CSR NO. 379, CA CSR NO. 7995

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CERTIFICATE

STATE OF HAWAII)

)ss.

CITY AND COUNTY OF HONOLULU)

I, B. KANOELANI COCKETT, CSR, Notary Public, State of Hawai'i, do hereby certify:

That on Monday, August 6th, 2007 at 1:09 p.m. appeared before me MILAGROS I. DRAKE, the witness whose deposition is contained herein; that prior to being examined she was by me duly sworn;

That the deposition was taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

Dated this 21st day of August 2007 in Honolulu, Hawai'i.

B. KANOELANI COCKETT

HI CSR NO. 379, CA CSR NO. 7995

Notary Public, State of Hawai'i

My commission expires: 2-19-2009

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

RAYMOND WARE,)	CIVIL NO. 04-00671 HG LEK
)	
Plaintiff,)	CERTIFICATE OF SERVICE
)	
v.)	
)	
MICHAEL CHERTOFF, Secretary,)	
DEPARTMENT OF HOMELAND)	
SECURITY,)	
Defendant.)	
)	
)	
)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

Served Electronically through CM/ECF:

Daphne E. Barbee
desekmet@aloha.net

September 27, 2007

DATED: September 27, 2007, at Honolulu, Hawaii.

Cecilia Jasaka-Rhoda